IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7094 of 1989
with
SPECIAL CIVIL APPLICATION No 7191 of 1989
with
SPECIAL CIVIL APPLICATION No 2336 of 1990
with
SPECIAL CIVIL APPLICATION No 8005 of 1990

with

CIVIL APPLICATION No 1493 of 2004
In
SPECIAL CIVIL APPLICATION No 7191 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MODI DIPAKBHAI AMRITLAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7094 of 1989
MR NK MAJMUDAR for Petitioner No. 1-13
MR PD BHATE, AGP for Respondent No. 1-2

MR VIJAY H PATEL for Respondent No. 3,7
NOTICE SERVED for Respondent No. 4,6,8-10
MR PK JANI for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/05/2004

ORAL JUDGEMENT

1. This group of petitions involve a common question of law to the effect that whether a person included in the select list gets right to be appointed on the post for which he has been selected. In these petitions selectees of the various posts have approached this Court making a grievance that despite they having been selected and placed on select list, they are not offered the employment by the respondents.

2.0. The petitioner of Special Civil Application No. 2336 of 1990 had appeared for the interview for the post of Clerk in the Accounts Cadre in response to the advertisement issued on behalf of respondent no. 1. By order dated 25th June, 1994 he was intimated that he was selected and was placed in the waiting list at serial no. 23. It is his say that despite there were number of vacancies in the post of Clerk in Accounts cadre, he was not being given appointment on the said post. He has, therefore, approached this Court by filing this petition under Article 226 of the Constitution of India.

2.1. The petitioners of Special Civil Application No. 8005 of 1990 have been selected as Clerks in Accounts Cadre and Administrative Cadre and have been placed on the waiting list. According to them, petitioners nos. 1 and 2 had applied for the post of Clerk in Accounts Cadre and petitioners nos. 3 to 10 had applied for the post of Clerk in Administrative Cadre. Petitioners nos. 3 and 12 have been selected and kept on the waiting list at serial nos. 7, 8, 4, 6, 5, 3, 2, 1 respectively; whereas petitioners nos. 1 and 2 have been placed at serial nos. 3 and 4. Their grievance is that these posts were not filled in till June 1989, may be because of some circular from the Government. Their grievance is that the waiting list ought to have been operated and they ought to have been offered the employment.

2.2. Petitioners of Special Civil Application

No. 7094 of 1989 have applied for the post of Gram Panchayat Secretary in response to the advertisement dated 11th October, 1983. According to them, a select list was prepared where they have been given rank nos., details of which have been mentioned in the petition. According to them, though they were required to give appointment to the petitioners by operating select list, that has not been done which has deprived them of their legitimate right to have appointment on the said post.

2.3. Special Civil Application No. 7191 of 1989 is filed by the candidates who were selected for the post of Talati-cum-Mantri after they were declared successful at the examination. Their say is that the select list has not been operated till the date of the filing of the petition and they were wrongly denied the appointment on the said post. Thus, the grievance is common. According to them, since the posts were vacant and they were duly selected for the respective posts and placed on the waiting list, those lists ought to have been operated in time by the concerned respondents so as to see that the petitioners got the appointment in their services.

2.4. As against that, the say of the respondents is that by virtue of the ban imposed by the Government against fresh recruitment, the select list could not be operated. It has further contended that the petitioners at a belated stage cannot make a grievance of such nature and seek relief directing them to operate the select lists and to give appointments to the petitioners on the respective posts. For that purpose reliance has been placed by them on the judgments of this Court.

3. Having heard learned counsels for the petitioners as well as respondents, it is clear that the petitioners were placed in the respective select lists some time in the year 1984. Since the lists were not acted upon, they could not get the appointment. It is only after expiry of almost six years, they have approached this Court for seeking aforesaid relief. It is by now a well settled principle of law that placement in the select list does not confer any right of appointment on the successful candidate. It is merely prepared to facilitate the process of appointment by the concerned authorities. If the list is not operated for considerable period, it will lose its efficacy and it will almost become defunct. All these principles of law have been duly settled by the Apex Court as well as this Court and different High Courts.

3.1. In the case of Rathodbhai J. Dungarbhai v/s. State of Gujarat learned Single Judge of this Court [Coram : S.D. Shah, J.] has delivered a judgment which is reported in 1995 (1) G.L.H. p.180 wherein the learned Judge has taken the following view :-

> "29. From the aforesaid observations, it becomes clear that simply because name of person is included in the select list, he does not acquire any right of being appointed on the post. Secondly, it is always open to the Govt. not to fill up all the vacancies for a valid reason. Such a decision should not be arbitrary and unreasonable but must be based on sound, rationale and conscious application of mind. If for reasons which are reasonable and rational, it is decided not to fill up the vacancies, Govt. cannot be compelled by mandamus to fill up the vacancies. ....
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> 31. From the aforesaid observations, it becomes clear that even Constitutional Bench of the Supreme Court of India has not taken the view that a successful candidate whose name is included in the select list does not acquire any indefeasible right to be appointed. Notification of vacancies simply is an invitation to qualified candidates to apply for requirement and on inclusion of their names in the select list they do not acquire any right to the post. There is no legal duty on the State to fill up the post. It is for the State to take a decision as to whether it wants to fill up all vacancies or not. Govt. has to decide how many appointments should be made. Existence of vacancy does not give a legal right to selected candidate. The decision not to fill up the vacancies has to be taken bona fide for appropriate and good reasons. Once it is established that the Govt. has acted in good faith and has for valid reasons decided not to fill in the post, there is no jurisdiction in the Court to issue mandamus to fill up the post from amongst candidates, whose names are included in the select list. The submission that the authorities were under a duty to continue the process of filling up all vacancies until none remains vacant was in terms negatived by the Supreme Court. ...."

Thus, the selection of a candidate and his placement in the waiting list does not confer upon him a substantive

right of being appointed to the post for which the advertisement was issued. If that be so and also for the reason that the Government then was experiencing, the financial constraint and it had imposed ban on fresh recruitment, the petitioners could not have insisted for operation of the lists and for being appointed on the posts.

3.2. It is also now settled position of law that during pendency of the first list if the second select is published, the first list has to make way for the second one. It is the second list that would be relevant for the process of appointment. Learned Single Judge of this Court [Coram : S.K. Keshote, J.] in a decision rendered in the case of Gondalia Dhirajlal Banabhai v/s. State of Gujarat reported in 39 (2) G.L.R. at page 1262 has taken following view :-

"14. Now, I may consider another submission raised by the learned Counsel for the petitioners. In this case the next select list has been prepared on which there may not be any dispute. Not only this list has been prepared but it has been acted upon and the candidates belonging to S.T. category have been given the appointments. Once the next list is prepared then leaving apart the Government resolution of 1993 if we go by the Rules, 1970 the earlier list prepared stood lapsed. The Counsel for the petitioners has tried to draw a thin distinction in between the cases where the appointments have been made in the second list of the exact number of vacancies advertised earlier in response to which the second list is prepared and the case wherein the second list the appointments have been made of the number of candidates less than what the posts were advertised in response to which the first list is prepared, but that is not relevant. What is relevant is whether the second list is prepared or not. In response to the circular of the Government of 2nd January, 1990 where the directions were given to first fill in the backlog vacancies, the second list has been prepared and leaving apart the fact that some malpractice has been adopted, the appointments have been made more in number than what the posts were advertised. In later point of time out of that list of 809 candidates, good number of candidates were taken out but that is not relevant for deciding this question. Rule only contemplates that in case the second list is

prepared than first stood lapsed. The second list was for filling up first the backlog vacancies and to fulfil that object the second list has rightly been prepared and on preparation of the same, the first list stood lapsed. So otherwise on this ground also, the petitioners have no case."

Further that the learned Judge also took into consideration the lapse of period between the preparation of the select list and the date on which the direction may be issued by this Court. In that case it was seven years and the learned Judge has observed as under :-

"15. There is yet another aspect of the matter which needs to be referred. The advertisement has been given on 13th August, 1989 and if we go by the fact which have been given out by the petitioners in the Special Civil Application, in pursuance thereof the select list has been prepared in the year 1989. The backlog vacancies have been filled in and thereafter the fresh advertisement has also been given in 1994. In view of this fact otherwise also, to give the direction to the respondent to fill up the posts from that list of 1989, i.e. after more than about seven years may not be justified. The petitioners are also responsible for delay in approaching to this Court. The list has been prepared in the year 1989 and the petitioners filed this Special Civil Application before this Court in 1994. The circular of the Government is of 2nd January, 1990 and thereafter the exercise was undertaken to fill up the backlog vacancies. At that point of time, the petitioners have not challenged that action of the respondents before this Court and the respondents were permitted by the petitioners to proceed with the process of selection for the backlog of S.T. vacancies. This delay on the part of the petitioners has remained unexplained. Otherwise also, if the contention of the counsel for the petitioners is accepted then the appointments have to be given to them and result thereof would be to make a room for them by terminating the services of the S.T. candidates. The appointments cannot be restricted only to the petitioners and in that case the appointments have to be made in the order of merits of the candidates as placed in the select list. The list is of more than 1,100 candidates as it come out from the facts and

> against the posts of S.T. backlog the general candidates will get the appointments. So what this Court will do, will act contrary to what the Constitution contemplates for the reservation of the posts for S.T. category. This Court sitting under Art. 226 of the Constitution will not give any such direction which may perpetuate any illegality or unconstitutionality."

In the instant case it is almost 18 years from the date the select lists were prepared. The petitions were filed in the years 1989 and 1990. It is absolutely meaningless to issue any direction to the respondents to operate that select list and to give appointments to the petitioners on the respective posts in the year 2004.

4. Thus, considering the aforesaid position of law and also considering the facts of all these petitions, these cases squarely stand covered by the ration laid down by this Court in the aforesaid decisions. These petitions, therefore, do not have any merit and they are required to be dismissed and they are hereby ordered to be dismissed. Rule discharged with no order as to costs.

In view of the above, Civil Application No. 1493 of 2004 does not survive and it is disposed of accordingly.

[AKSHAY H. MEHTA, J.]

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